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H.270

Introduced by Representatives Killacky of South Burlington, Troiano of
Stannard, and Walz of Barre City

Referred to Committee on

Date:

Subject: Labor; employment practices; wages

Statement of purpose of bill as introduced: This bill proposes to make
technical changes to Vermont’s wage and hour laws in order to modernize the
statutory language and to repeal or amend obsolete provisions.

An act relating to modernizing Vermont’s wage and hour laws

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 21 V.S.A. § 341 is amended to read:

§ 341. DEFINITIONS

As used in this subchapter:

* * *

(2) “Employer” means any person ~~having employees in his or her~~
service that employs one or more employees.

(3) “Commissioner” means the Commissioner of Labor ~~or designee.~~

* * *

1 Sec. 2. 21 V.S.A. § 342 is amended to read:

2 § 342. WEEKLY PAYMENT OF WAGES

3 (a)(1) Any employer ~~having one or more employees~~ that is doing and
4 ~~transacting~~ business within the State shall pay each week, in lawful money or
5 checks, the wages earned by each employee to a day not more than six days
6 prior to the date of ~~such~~ payment.

7 (2) ~~After giving written notice to the employee or employees~~
8 Notwithstanding subdivision (1) of this subsection, any employer having ~~an~~
9 ~~employee or one or more employees~~ that is doing and ~~transacting~~ business
10 within the State may, ~~notwithstanding subdivision (1) of this subsection~~ either:

11 (A) after giving notice to each employee, pay biweekly or
12 semimonthly in lawful money or checks each employee the wages earned by
13 the employee to a day not more than six days prior to the date of ~~the~~ payment.
14 If a; or

15 (B) pursuant to the terms of a collective bargaining agreement ~~so~~
16 ~~provides, the payment may be made~~ pay any employee who is subject to that
17 agreement the wages earned by the employee to a day not more than 13 days
18 prior to the date of payment.

19 (3)(A) ~~A school district employee~~ An employee of a school district or
20 supervisory union may elect in writing to have a set amount or set percentage
21 of his or her after-tax wages withheld by the school district or supervisory

1 union in a district-held or supervisory union-held bank account each pay
2 period. The percentage or amount withheld shall be determined by the
3 employee.

4 (B) At the option of the employee, the school district or supervisory
5 union shall disburse the funds to the employee in either a single payment at the
6 time the employee receives his or her final paycheck of the school year, or in
7 equal weekly or biweekly sums beginning at the end of the school year.

8 (C)(i) The school district or supervisory union shall disburse funds
9 from the account in any sum as requested by the employee and, at the end of
10 the school year or at the employee's option over the course of the period
11 between the current and next school year, or upon separation from
12 employment, shall remit to the employee any remaining funds, including
13 interest earnings, held in the account.

14 (ii) For employees ~~within~~ in a bargaining unit organized pursuant
15 to either chapter 22 of this title or 16 V.S.A. chapter 57, the school district or
16 supervisory union shall implement this election in a manner consistent with the
17 provisions of this subdivision and as determined through negotiations under
18 those chapters.

19 (iii) For employees not ~~within~~ in a bargaining unit, the school
20 district or supervisory union shall, ~~in a manner consistent with this subdivision,~~
21 determine the manner in which to implement the provisions of this subdivision.

1 (b) An employee who:

2 (1) voluntarily leaves employment shall be paid on the last regular pay
3 day, or if there is no regular pay day, on the following Friday;

4 (2) is discharged from employment shall be paid within 72 hours of
5 discharge;

6 (3) is absent from his or her regular place of employment on the
7 employer's regular scheduled date of wages or salary payment shall be entitled
8 to payment upon demand.

9 (c) With the written authorization of an employee, an employer may pay
10 wages due the employee by any of the following methods:

11 (1) Deposit through electronic funds transfer or ~~other~~ direct deposit
12 ~~systems~~ to a checking, savings, or other deposit account maintained by or for
13 the employee in any financial institution within or ~~without~~ outside the State.

14 (2) Credit to a payroll card account, other than a checking, savings, or
15 other deposit account described in subdivision (1) of this subsection, that is
16 directly or indirectly established by an employer in a federally insured
17 depository institution to which electronic fund transfers of the employee's
18 wages, salary, or other ~~employee compensation is~~ are made on a recurring
19 basis, ~~other than a checking, savings, or other deposit account described in~~
20 ~~subdivision (1) of this subsection,~~ provided all the following:

1 (A) The employer provides the employee written disclosure in plain
2 language, in at least 10-point type of both the following:

3 (i) ~~All~~ all the employee's wage payment options; and

4 (ii) ~~The~~ the terms and conditions of the payroll card account
5 option, including a complete list of all known fees that may be deducted from
6 the employee's payroll card account by the employer or the card issuer and
7 whether third parties may assess fees in addition to the fees assessed by the
8 employer or issuer.

9 (B) ~~Copies of the written disclosures required by subdivisions (A)~~
10 ~~and (F) of this subdivision (c)(2) and by subsection (d) of this section shall be~~
11 ~~provided to the employee in the employee's primary language or in a language~~
12 ~~the employee understands.~~

13 (C) The employee voluntarily consents in writing to payment of
14 wages by payroll card account after receiving the disclosures described in
15 subdivision (A) of this subdivision (c)(2), and ~~this~~ the employee's consent is
16 not a condition of hire or continued employment.

17 (D)(C) The employer ensures that the payroll card account provides
18 that during each pay period, the employee has at least three free withdrawals
19 from the payroll card, one of which permits withdrawal of the full amount of
20 the balance at a federally insured depository institution or other location
21 convenient to the place of employment.

1 ~~(E)~~(D) None of the employer's costs associated with the payroll card
2 account are passed on to the employee, and the employer ~~shall~~ does not receive
3 any financial remuneration for using the pay card at the employee's expense.

4 ~~(F)~~(E)(i) At least 21 days before any change takes effect, the
5 employer provides the employee with written notice in plain language, in at
6 least 10-point type, of the following:

7 (I) any change to any of the terms and conditions of the payroll
8 card account, including any changes in the itemized list of fees; and

9 (II) the employee's right to discontinue receipt of wages by a
10 payroll card account at any time and without penalty.

11 (ii) The employer may not charge the employee any additional
12 fees until the employer has notified the employee in writing of the changes.

13 ~~(G)~~(F) The employer provides the employee the option to discontinue
14 receipt of wages by a payroll card account at any time and without penalty to
15 the employee.

16 ~~(H)~~(G) The payroll card issued to the employee shall be a branded-
17 type payroll card that complies with both the following:

18 (i) Can be used at a PIN-based or a signature-based outlet.

19 (ii) The payroll card agreement prevents withdrawals in excess of
20 the account balance and to the extent possible protects against the account
21 being overdrawn.

1 ~~(H)~~(H) The employer ensures that the payroll card account provides
2 one free replacement payroll card per year at no cost to the employee before
3 the card's expiration date. A replacement card need not be provided if the card
4 has been inactive for a period of at least 12 months or the employee is no
5 longer employed by the employer.

6 ~~(I)~~(I) A nonbranded payroll card may be issued for temporary
7 purposes and shall be valid for no more than 60 days.

8 ~~(J)~~(J) The payroll card account shall not be linked to any form of
9 credit, including a loan against future pay or a cash advance on future pay.

10 ~~(K)~~(K) The employer shall not charge the employee an initiation,
11 loading, or other participatory fee to receive wages payable in an electronic
12 fund transfer to a payroll card account, with the exception of the cost required
13 to replace a lost, stolen, or damaged payroll card.

14 ~~(L)~~(L) The employer shall ensure that the payroll card account
15 provides to the employee, ~~upon the employee's written or oral request,~~ one free
16 written transaction history each month ~~which~~ that includes all deposits,
17 withdrawals, deductions, or charges by any entity from or to the employee's
18 payroll card account for the preceding 60 days. The employer shall also ensure
19 that the account allows the employee to elect to receive the monthly
20 transaction history by regular mail, electronic mail, or in another digital
21 format.

1 (d)(1) If a payroll card account is established with a financial institution as
2 an account that is individually owned by the employee, the employer's
3 obligations and the protections afforded under subsection (c) of this section
4 shall cease 30 days after the employer-employee relationship ends and the
5 employee has been paid his or her final wages.

6 (2) Upon the termination of the relationship between the employer and
7 the employee who owns the individual payroll card account:

8 (A) the employer shall notify the financial institution of any changes
9 in the relationship between the employer and employee; and

10 (B) the financial institution holding the individually owned payroll
11 card account shall provide the employee with a written statement in plain
12 language describing a full list of the fees and obligations the employee might
13 incur by continuing a relationship with the financial institution.

14 (e) The Department of Financial Regulation may adopt rules to implement
15 subsection (c) of this section.

16 (f) The employer shall provide to the employee copies of the written
17 disclosures required by subdivisions (A) and (E) of subdivision (c)(2) and by
18 subsection (d) of this section in the employee's primary language or in a
19 language the employee understands.

1 wages are due in an amount that is less than the amount claimed, notice shall
2 be provided to all interested parties by certified mail or service.

3 * * *

4 (e) Within 30 days after the date of the ~~collection order~~ determination, the
5 employer or employee may file an appeal from the determination to a
6 departmental administrative law judge. The appeal shall, after notice to the
7 employer and employee, be heard by the administrative law judge within a
8 reasonable time. The administrative law judge shall review the complaint de
9 novo, and after a hearing, the determination and, if applicable, order for
10 collection shall be sustained, modified, or reversed by the administrative law
11 judge. Prompt notice in writing of the decision of the administrative law judge
12 and the reasons for it shall be given to all interested parties.

13 * * *

14 Sec. 4. 21 V.S.A. § 343 is amended to read:

15 § 343. FORM OF PAYMENT

16 An employer shall not pay employees with any form of evidence of
17 indebtedness, including all scrip, vouchers, due bills, or store orders, unless ~~the~~
18 ~~employer is in compliance with one or both of the following:~~

19 (1) ~~The~~ the employer is a cooperative corporation in which the
20 employee is a stockholder, in which case, the cooperative corporation shall,

1 upon request of ~~any shareholding~~ the employee, pay the ~~shareholding~~
2 employee as provided in section 342 of this title; or

3 (2) ~~Payment~~ payment is made by check as defined in Title 9A or by an
4 electronic fund transfer as provided in section 342 of this title.

5 Sec. 5. 21 V.S.A. § 344 is amended to read:

6 § 344. ASSIGNMENT OF FUTURE WAGES

7 (a) An assignment of future wages payable ~~under the provisions of~~
8 pursuant to section 342 of this ~~title~~ subchapter shall not be valid, if it is made
9 or procured to be made to:

10 (1) the employer from whom ~~such~~ the wages are to become due; or

11 (2) ~~to anyone in any person on~~ behalf of ~~such~~ the employer, or ~~if made~~
12 ~~or procured to be made to anyone~~ for the purpose of relieving ~~such~~ the
13 employer from the obligation to pay under the provisions of section 342 of this
14 subchapter.

15 (b) ~~Such~~ An employer shall not require ~~an agreement from~~ an employee to
16 agree, as a condition of employment, to accept wages at any other period as a
17 condition of employment than as permitted pursuant to section 342 of this
18 subchapter.

1 Sec. 6. 21 V.S.A. § 345 is amended to read:

2 § 345. NONPAYMENT OF WAGES AND BENEFITS

3 (a) ~~Each~~ An employer who violates section 342, 343, 482, or 483 of this
4 title shall be fined not more than \$5,000.00. ~~Where~~ If the employer is a
5 corporation, the president or other officers who have control of the payment
6 operations of the corporation shall be considered employers and liable to the
7 employee for actual wages due when the officer has willfully ~~and without good~~
8 ~~cause~~ participated in knowing violations of this ~~chapter~~ subchapter.

9 (b) In addition to any other penalty or punishment ~~otherwise~~ prescribed by
10 law, any employer who, pursuant to an oral or written employment agreement,
11 is required to provide benefits to an employee shall be liable to the employee
12 for actual damages caused by the failure to pay for the benefits, and where the
13 failure to pay is knowing and willful and continues for 30 days after the
14 payments are due shall be assessed ~~a civil~~ an administrative penalty by the
15 Commissioner of not more than \$5,000.00.

16 (c) The Commissioner may enforce collection of the ~~finer~~ penalties
17 assessed under this section in the Civil Division of the Superior Court.

18 Sec. 7. 21 V.S.A. § 382 is amended to read:

19 § 382. ~~COVERAGE~~

20 ~~Employers employing two employees or more are covered by this~~
21 ~~subchapter.~~ [Repealed.]

1 Sec. 8. 21 V.S.A. § 383 is amended to read:

2 § 383. DEFINITIONS

3 ~~Terms used in this subchapter have the following meanings, unless a~~
4 ~~different meaning is clearly apparent from the language or context~~ As used in
5 this subchapter:

6 (1) “Commissioner;” means the Commissioner of Labor or designee;

7 (2) “Employee;” means any individual employed or permitted to work
8 by an employer except:

9 (A) any individual employed in agriculture;

10 (B) any individual employed in domestic service in or about a private
11 home;

12 (C) any individual employed by the United States;

13 (D) any individual employed in the activities of a public supported
14 nonprofit organization, except laundry employees, nurses’ aides, or practical
15 nurses;

16 (E) any individual employed in a bona fide executive, administrative,
17 or professional capacity;

18 (F) any individual making home deliveries of newspapers or
19 advertising;

20 (G) ~~taxi-cab~~ taxicab drivers;

21 (H) outside salespersons; and

1 (I) secondary school students working during all or any part of the
2 school year or regular vacation periods. As used in this subdivision (2)(I),
3 “regular vacation periods” does not include the period between two successive
4 academic years.

5 (3) “Employer” means any person that employs two or more employees.

6 (4) “Occupation;” means an industry, trade, or business, or branch
7 thereof or a class of work in which workers are gainfully employed.

8 ~~(4) [Repealed.]~~

9 Sec. 9. 21 V.S.A. § 384 is amended to read:

10 § 384. EMPLOYMENT; WAGES

11 (a)(1) An employer shall not employ any employee at a rate of less than
12 ~~\$10.96. Beginning on January 1, 2021, an employer shall not employ any~~
13 ~~employee at a rate of less than~~ \$11.75. Beginning on January 1, 2022, an
14 employer shall not employ any employee at a rate of less than \$12.55, and on
15 each subsequent January 1, the minimum wage rate shall be increased by five
16 percent or the percentage increase of the Consumer Price Index, CPI-U,
17 U.S. city average, not seasonally adjusted, or successor index, as calculated by
18 the U.S. Department of Labor or successor agency for the 12 months preceding
19 the previous September 1, whichever is smaller, but in no event shall the
20 minimum wage be decreased. The minimum wage shall be rounded off to the
21 nearest \$0.01.

1 (2) An employer in the hotel, motel, tourist place, and restaurant
2 industry shall not employ a service or tipped employee at a basic wage rate less
3 than one-half the minimum wage. As used in this ~~subsection~~ subdivision, “a
4 service or tipped employee” means an employee of a hotel, motel, tourist
5 place, or restaurant who customarily and regularly receives more than \$120.00
6 per month in tips for direct and personal customer service.

7 (3) If the minimum wage rate established by the U.S. government is
8 greater than the rate established ~~for Vermont~~ pursuant to subdivision (1) of this
9 subsection for any year, the minimum wage rate for that year shall be the rate
10 established by the U.S. government.

11 (b) Notwithstanding subsection (a) of this section, an employer shall not
12 pay an employee less than one and one-half times the regular wage rate for any
13 work done by the employee in excess of 40 hours during a workweek.

14 However, this subsection shall not apply to:

15 (1) Employees of any retail or service establishment. A “retail or
16 service establishment” means an establishment 75 percent of whose annual
17 volume of sales of goods or services, or of both, is not for resale and is
18 recognized as retail sales or services in the particular industry.

19 (2) Employees of an establishment ~~which~~ that is an amusement or
20 recreational establishment, if:

1 (A) it does not operate for more than seven months in any calendar
2 year; or

3 (B) during the preceding calendar year its average receipts for any six
4 months of that year were not more than one-third of its average receipts for the
5 other six months of the year.

6 (3) Employees of an establishment that is a hotel, motel, or restaurant.

7 (4) Employees of hospitals, public health centers, nursing homes,
8 maternity homes, therapeutic community residences, and residential care
9 homes as those terms are defined in Title 18, provided:

10 (A) the employer pays the employee on a biweekly basis; and

11 (B) the employer files an election to be governed by this section with
12 the Commissioner; and

13 (C) the employee receives not less than one and one-half times the
14 regular wage rate for any work done by the employee:

15 (i) in excess of eight hours for any workday; or

16 (ii) in excess of 80 hours for any biweekly period.

17 (5) ~~Those employees~~ Employees of a business engaged in the
18 transportation of persons or property to whom the overtime provisions of the
19 federal Fair Labor Standards Act do not apply, ~~but~~ However, this subsection
20 shall apply to all other employees of such businesses.

21 (6) ~~Those employees~~ Employees of a political subdivision of this State.

1 gratuities, board, lodging, or other items or services supplied by the employer;
2 ~~including gratuities~~, be less than the minimum wage ~~rate set forth in~~
3 established pursuant to section 384 of this title. No deduction may be made for
4 the care, cleaning, or maintenance of required apparel. No deduction for
5 required apparel shall be made without the employee's express written
6 authorization and the deduction shall not:

7 (A) reduce the total remuneration received by an employee below the
8 ~~hourly~~ minimum wage established pursuant to section 384 of this title;

9 (B) include any administrative fees or charges; or

10 (C) amend, nullify, or violate the terms and conditions of any
11 collective bargaining agreement.

12 (5) To recommend a suitable scale of rates for learners, apprentices, and
13 persons with disabilities, which may be less than the regular minimum wage
14 rate for experienced workers without disabilities.

15 Sec. 11. 21 V.S.A. § 386 is amended to read:

16 § 386. INVESTIGATIONS

17 The Commissioner may, and on a petition of 50 or more residents of the
18 State shall, ~~make an investigation of~~ investigate any industry, business,
19 occupation, or employment ~~as set forth in~~, pursuant to the provisions of section
20 385 of this title, to ascertain whether any violations of this subchapter have
21 occurred.

1 Sec. 12. 21 V.S.A. § 391 is amended to read:

2 § 391. ~~MODIFICATION OF WAGE ORDERS~~

3 ~~The Commissioner with the approval of the Governor may from time to~~
4 ~~time propose modifications of or additions to any regulations included in any~~
5 ~~minimum wage order which the Commissioner deems appropriate. [Repealed.]~~

6 Sec. 13. 21 V.S.A. § 392 is amended to read:

7 § 392. ~~COURT PROCEEDINGS~~

8 ~~If any employer covered by a wage order has failed to comply with the~~
9 ~~wage order within 14 days after receiving notification of the violation, the~~
10 ~~Commissioner shall take court action to enforce the order. [Repealed.]~~

11 Sec. 14. 21 V.S.A. § 393 is amended to read:

12 § 393. EMPLOYERS' RECORDS; NOTICE

13 ~~(a) Every employer, subject to the provisions of this subchapter or of any~~
14 ~~regulation or order issued thereunder, shall keep a true and accurate record of~~
15 ~~the hours worked by each employee and of the wages paid to him or her and~~
16 ~~shall furnish to the Commissioner upon demand a sworn statement of the same.~~

17 ~~Such The records shall be open to inspection by the Commissioner, ~~his or her~~~~
18 ~~deputy, or any authorized agent of the Department at any reasonable time.~~

19 ~~(b) Every employer subject to the provisions of this subchapter or of any~~
20 ~~regulation or order issued under the provisions thereof shall keep a copy of~~
21 ~~them posted post notice of the provisions of this subchapter in a form provided~~

1 by the Commissioner in a conspicuous place in the area where employees are
2 employed. ~~The Commissioner shall furnish copies of such orders and~~
3 ~~regulations to employers without charge.~~

4 Sec. 15. 21 V.S.A. § 394 is amended to read:

5 § 394. PENALTIES

6 (a) Any employer, ~~subject to this subchapter or any regulations or orders~~
7 ~~issued thereunder, or any of the employer's agents or the officer or agent of~~
8 ~~any corporation~~ an employer, who pays ~~or~~₂ permits to be paid₂ or agrees to pay
9 to any employee ~~engaged in any industry or occupation~~ less than the applicable
10 rate to which the employee is entitled ~~under~~ pursuant to this subchapter, shall
11 be ~~fin~~_{ed} assessed an administrative penalty of not more than \$100.00 for each
12 day the employee is paid less than the rate required ~~under~~ pursuant to this
13 subchapter.

14 (b) ~~Any~~ An employer or ~~any of the employer's agents or the~~ an officer or
15 agent of ~~any corporation who fails to keep the records required under this~~
16 ~~subchapter or refuses to permit the Commissioner to enter the place of business~~
17 ~~or who fails to furnish the records to the Commissioner upon demand~~ an
18 employer, shall be fined not more than \$100.00 for any of the following:

19 (1) failing to keep the records required pursuant to this subchapter;

20 (2) refusing to permit the Commissioner to enter the place of business;

21 or

1 ~~(3) failing to furnish records to the Commissioner upon demand.~~

2 Sec. 16. 21 V.S.A. § 395 is amended to read:

3 § 395. CIVIL ACTIONS

4 ~~If any~~ An employee who is paid by an employer less than the applicable
5 wage rate to which the employee is entitled ~~under~~ pursuant to this subchapter,
6 ~~the employee~~ shall recover, in a civil action, twice the amount of the minimum
7 wage established pursuant to section 384 of this subchapter less any amount
8 actually paid by the employer, together with costs and reasonable attorney's
9 fees, ~~and any.~~ An agreement between an employer and an employee to work
10 for less than the wage rates ~~is no~~ established pursuant to section 384 of this
11 subchapter shall not be a defense to the action.

12 Sec. 17. 21 V.S.A. § 396 is amended to read:

13 § 396. APPEALS FROM COMMISSIONER'S DECISIONS

14 (a) Appeals to Superior Court ~~wherein a civil action between the parties~~
15 ~~would be triable.~~ Any person aggrieved by ~~any~~ a decision of the
16 Commissioner may appeal to the Superior Court.

17 (b) Procedure. The Commissioner shall forward to the Court the record of
18 the decision on appeal. The court shall ~~direct the record in the matter appealed~~
19 ~~from to be laid before it, hear the evidence, and make such order approving in~~
20 ~~whole or in part or setting aside in whole or in part the decision appealed from~~
21 ~~as justice may require~~ consider the record and any evidence presented, may

1 approve or set aside the Commissioner's decision in whole or in part, and may
2 refer any matter or issue arising in the proceedings to the Commissioner for
3 further consideration. ~~However, in~~ In no case shall such an appeal operate as a
4 ~~supersedes or~~ stay unless the Commissioner or the court to which ~~such~~ the
5 appeal is taken ~~shall so order~~ orders.

6 (c) Certifying record. ~~An order of court to send up~~ The Commissioner may
7 provide to the court the record ~~may be complied with~~ by filing either the
8 original papers or duly certified copies ~~thereof, or of such portions thereof as~~
9 ~~the order may specify, of them~~ together with a certified statement of ~~such~~ any
10 other facts ~~as~~ that show the grounds of the action appealed from.

11 (d) Hearing. The court may take evidence or may appoint a referee to take
12 ~~such~~ evidence as it may direct ~~and to report the same with findings of fact.~~ A
13 referee that is appointed shall submit a report to the court of all evidence taken
14 together with findings of fact.

15 (e) Costs. In any proceedings under this subchapter, the court may ~~make~~
16 ~~such~~ award of any costs ~~as may seem~~ it determines to be equitable and just.

17 (f) Appeal, Supreme Court. ~~Appeal from the~~ The decision of the Superior
18 Court may be ~~had~~ appealed to the Supreme Court.

19 Sec. 18. EFFECTIVE DATE

20 This act shall take effect on July 1, 2021.